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July 26, 1994

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

RE: GN Docket No. 93-252
Regulatory Treatment of Mobile Services

Dear Mr. Caton:

On Monday, July 25, 1994, on behalf of AirTouch Communications, Ken Starling and I met with Richard Welch, Legal Advisor to Commissioner Chong and Jill Luckett Special Advisor to Commissioner Chong to discuss the above-referenced proceeding. The attached materials were distributed.

Two copies of this notice were submitted to the Secretary of the FCC in accordance with Section 1.1206(a)(1) of the Commission's Rules.

Please stamp and return the provided copy to confirm your receipt. Please contact me at 202-293-4960 should you have any questions or require additional information concerning this matter.

Sincerely,

Kathleen Q. Abernathy

Attachment

cc: Richard Welch
Jill Luckett

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PRESENTATION TO FCC ON FNPRM DOCKET 93-252

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- Virtually all comments urge Commission not to adopt spectrum caps for CMRS industry.
- There is no competitive need for spectrum caps.
 - (A) Firms in CMRS markets are not likely to collude because:
 - (1) actual and potential providers of CMRS services are too numerous and too diverse to have common interests,
 - (2) not all CMRS providers compete with each other,
 - (3) rapid rate of technological change makes any collusive agreement difficult to achieve and sustain, and
 - (4) any licensee that engages in collusive behavior risks the loss of its license.
 - (B) No CMRS providers will unilaterally achieve the market power necessary to raise prices or reduce output:
 - (1) no single provider is likely to have market share that exceeds Justice Department Merger Guidelines threshold of competitive concern;
 - (2) even the Justice Department has acknowledged that, in telecommunications markets, economies of scale and scope may justify exceptions to the general rules on firm size, in order to stimulate innovation;
 - (3) even assuming that a single provider acquires a significant market share, CMRS technology enables competitors to expand capacity, providing a safety valve against the exercise of market power; and

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- (4) entry has occurred and can occur with the use of small amounts of spectrum, which would also defeat exercise of market power.
- Spectrum caps cannot be justified on the basis of potential that CMRS licensee could exert market power:
 - (1) if anticompetitive foreclosure occurs, it is likely to involve conduct, which can be addressed by the Commission and the Justice Department under antitrust law at the time;
 - (2) to "reserve" spectrum space for potential entrants in order to avoid the acquisition of market power would sacrifice real opportunities for innovation and diversity in the name of incremental potential competition; and
 - (3) it would be counterproductive if incumbent providers were forced to curtail or divest competitive, productive services in order to enter into new, innovative services.
- It is premature for the Commission to attempt to predetermine limits on spectrum, since the amount of spectrum required to provide some services, such as LEO services, has not even been determined.
- Any caps imposed should apply to those services which compete with each other -- cellular, PCS and SMR -- and not to those which do not.